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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,848	12/20/2001	John William Tobin	F6145(C)	2553

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UNILEVER
PATENT DEPARTMENT
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EXAMINER	
WEIER, ANTHONY J	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/027,848	TOBIN, JOHN WILLIAM	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 March 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is indefinite in that it is not further limiting of claim 5 (i.e. the heated solvent has been set forth as having a temperature of 40-100 C, but claim 6 calls for 2-30 C).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Schellgell et al.

Schellgell et al discloses a method of preparing a beverage wherein a coffee extract which has been concentrated is heated to a temperature of 110 F (43.3 C) and mixed with heated water (e.g. 195 F or 85 C) to produce a beverage on demand (i.e. when desired). Schellgell et al further discloses the use of coffee concentrate that is well within the range called for in claim 9 (see col. 1, line 48 – col. 2, line 35).

It is noted that the instant claims call for said beverage extract to be heated "within a beverage brewing machine". It is not seen where same provides a patentable

distinction. Moreover, it should be noted that to be entitled to weight in a method claim, the recited structure (i.e. beverage brewing machine) is of no patentable moment unless it affects the process in a manipulative sense. Clearly a beverage brewing machine is not required to effect heating of a beverage extract; Schellgell et al demonstrates same. See Ex parte Kangas, 125 USPQ 419.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schellgell et al.

The claims call for said extract to be a tea extract. However, although Schellgell et al pertains to the use of coffee extract, coffee and tea are prepared in a similar manner and commonly swapped in processes of brewing. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the process of Schellgell to incorporate tea rather than coffee as the brewed beverage.

The claims also call for the use of 45% heated solvent and a beverage having at least about 0.1% extract. Although Schellgell et al is silent regarding same, such consideration would have been well within the purview of one having ordinary skill in the art, and, absent showing of unexpected results, it would have been further obvious to

have arrived at such amount as a matter of preference depending on the particular extent of dilution, and subsequent taste, desired in the beverage product.

The claims further call for said beverage being translucent with no visible particles of extract. Again such consideration would have been well within the purview of one having ordinary skill in the art, and, absent showing of unexpected results, it would have been further obvious to have arrived at such a beverage, by use of filters, as a matter of preference as to the particular aesthetics desired in the prepared beverage product.

4. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schellgell et al as applied in paragraphs 2 or 3 and further in view of Haynes.

If it is shown that the use of a beverage brewing machine in the instant claims is of moment in affecting the process in a manipulative sense, it should be noted that it is well known to provide a coffee brewing apparatus that includes also a holding and cooling tank. As such, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the method of Schellgell et al to conduct said process in an apparatus having a brewing application in conjunction with the cooling storage unit as taught by Haynes and for the purpose of providing, for example, processing that utilizes less space.

5. Applicant's arguments with respect to the instant claims have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
June 10, 2004

6/10/04